

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In re

DON FRAME TRUCKING, INC.

Debtor

Case No. 18-11147-CLB

Chapter 11

**NOTICE OF MOTION FOR AN ORDER PERMITTING THE SALE OF THE DEBTOR'S
VEHICLES FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. SECTION 363(f)(4)**

MOTION MADE BY: Gross Shuman P.C., as attorneys for Don Frame Trucking, Inc.

**DATE, TIME AND
PLACE RETURNABLE:** July 9, 2018 at 3:00 p.m., United States Bankruptcy Court, Western
District of New York, Part II Courtroom, 3rd Floor, 300 Pearl Street, Suite
350, Buffalo, NY 14202.

Debtor has obtained the Court's oral approval shortening the notice requirements imposed by Federal Rules of Bankruptcy Procedure Rule 2002(a) to schedule the motion on the above-referenced return date. An order confirming this approval will follow.

SUPPORTING PAPERS: Motion of Debtor, Don Frame Trucking, Inc., for an Order Permitting the Sale of the Debtor's Vehicles Free and Clear of Liens Pursuant to 11 U.S.C. Section 363(f)(4).

RELIEF REQUESTED: Order Permitting the Sale of the Debtor's Vehicles Free and Clear of Liens.

GROUND FOR RELIEF: Section 363(f)(4) of the Bankruptcy Code.

Dated: Buffalo, New York
June 29, 2018

GROSS SHUMAN P.C.

By s/ Robert J. Feldman
Robert J. Feldman, Esq.
Janet G. Burhyte, Esq.
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TO: United States Trustee, All Creditors and Parties in Interest

Doc #643334.1

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WESTERN DISTRICT OF NEW YORK**

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DON FRAME TRUCKING, INC.

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**Case No. 18-11147-CLB
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**MOTION FOR AN ORDER PERMITTING THE SALE OF THE DEBTOR'S
VEHICLES FREE AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. §363(f)(4)**

The Debtor, Don Frame Trucking, Inc. ("Don Frame" or "Debtor"), by its attorneys, Gross Shuman P.C., makes this motion for an order authorizing the Debtor to sell the trucks and trailers listed on **Exhibit A** attached hereto (the "Vehicles") pursuant to 11 U.S.C. §363(f)(4) as more particularly set forth below.

1. As a preliminary matter, pursuant to the Debtor's oral application under the F. Rules Bankr. P. 9006, the Court has orally approved noticing this motion to be heard on July 9, 2018 at 3:00 p.m., on less than 21 days' notice as required by F. Rules Bankr. P. 2002(a). The Court has requested the Debtor to submit a proposed Order for the Court to sign to confirm this approval, which the Debtor is sending to the Court in hardcopy.

2. On June 13, 2018 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code and it continues to manage its property as a Debtor-in-Possession.

3. Don Frame is a New York corporation based in Fredonia, New York. It ceased operations as a business that engaged in the transportation of construction materials on May 18, 2018, and it has been liquidating its assets since that time.

4. This Chapter 11 proceeding was triggered by a lawsuit commenced by Don Frame's largest creditor, Jamestown Macadam, Inc. ("Jamestown Macadam"). Jamestown Macadam obtained a New York State Supreme Court ("State Court") order to show cause with a temporary restraining order, returnable in Mayville, New York on June 18, 2018 seeking turnover and attachment and other related forms of relief in connection with that lawsuit. Jamestown Macadam is owed approximately \$1,138,976, only \$500,000 of which is secured by two mortgages on the Debtor's real property. The temporary restraining order issued by the State Court froze the Debtor's bank accounts based upon the security interests of Jamestown Macadam in the Debtor's personal property outside of bankruptcy.

5. Other than its real property valued at \$1,000,000 subject to the mortgages of Jamestown Macadam in the amount of \$500,000, the Debtor's most valuable assets are the Vehicles listed in Exhibit A as having a total value of \$779,000.

6. Jamestown Macadam claims a security interest in the Vehicles; however, Jamestown Macadam failed to perfect its lien in the Vehicles.

7. On June 28, 2018, the Debtor filed an adversary proceeding to avoid the unperfected security interest of Jamestown Macadam in the Vehicles pursuant to 11 U.S.C. §544(a) (A.P. No. 18-1017).

8. Accordingly, the purported lien held by Jamestown Macadam is in dispute within the meaning of 11 U.S.C. §363(f).

9. Time is of the essence to sell the Vehicles. Summertime is the optimal time to sell the Vehicles in order to obtain their highest value. In fact, the Debtor has received three (3) offers to purchase three (3) of the Vehicles, all at higher prices than originally valued.

10. The Debtor seeks permission to sell the Vehicles at or above the fair market values listed on Exhibit A without further order of this Court given the need to sell during the time frame when the Vehicles are most valuable.

WHEREFORE, the Debtor hereby requests entry of an Order authorizing the Debtor to sell the trucks and trailers listed on Exhibit A hereto at or above the fair market values listed on Exhibit A free and clear of all liens and encumbrances pursuant to 11 U.S.C. §363(f)(4) and without further Order of this Court.

Dated: Buffalo, New York
June 29, 2018

GROSS SHUMAN P.C.

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